

The Department's regulations related to sales of computer software is set out at 86 Ill. Admin. Code 130.1935. (This is a GIL.)

December 8, 1998

Dear Mr. Xxxxx:

This letter is in response to your letter dated June 5, 1998. We apologize for the delay in responding to your inquiry. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

You were kind enough to respond to our June 1997 survey of state sales and use tax on software. Survey results appeared in Appendix D of TITLE. TITLE has included this annually updated, state-by-state summary of sales and use tax on software since 1984.

It will be greatly appreciated if you would respond to this year's survey as well: For that purpose, enclosed is the portion of Appendix D pertaining to your state. Please check it for accuracy, mark it up with corrections as necessary, and return it to me. If appropriate, add comments or cross references to relevant regulations, rules, or recent court decision. Copies of such regulations, rules, or decisions would be helpful, too.

Please return the enclosed portion of Appendix D even if you have made no changes.

Responses to the survey will be included in the 1999 Edition of TITLE, with a disclaimer to the effect that responses have been edited. If you would like to receive the 1999 Edition of Appendix D, write 'Send Appendix D' on this letter, along with the name and address of the person who should receive it, and return the letter to me.

Thank you for your cooperation.

The Department will not approve the accuracy of private legal publications. However, the "Appendix" attached to your letter appears to state the general rules regarding sales of computer software as provided in the enclosed copy of 86 Ill. Adm. Code 130.1935. I noted the references you have made to the Department's interpretations of Items D and E of Section 130.1935.

Item (D) of subsection (a) of Section 130.1935 requires the license to contain a provision requiring the vendor to provide another copy at minimal or no charge if the customer loses or damages the software. The Department has deemed software license agreements to have met this criteria if the agreements do not contain a provision about the loss or damage of the software, but the vendors' records reflect that they have a policy of providing copies of software at minimal or no cost if the customers lose or destroy the software.

Item (E) also requires a license to require a customer to destroy or return all copies of the software to the vendor at the end of the license period. The Department has deemed perpetual license agreements to qualify for this criteria even though no provision is included in the agreements that requires the return or the destruction of the software.

Please be advised that the Department intends to incorporate these interpretations into the rules regarding computer software in the near future.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Encl.